



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: VA/02298/2013

THE IMMIGRATION ACTS

Heard at Field House

On 22 January 2014

Determination

Promulgated

On 31 January 2014
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Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

**MR SARDAR GHULAM MUSTAFA KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Respondent

Representation:

For the Appellant: None

For the Respondent: Ms J Isherwood

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan whose date of birth is recorded as 21 March 1945. He applied for entry clearance for the purpose of a family visit to the United Kingdom for four weeks. That application was refused because the respondent was not satisfied (a) that the appellant was genuinely seeking entry as a visitor for a limited period, (b) not satisfied

that the appellant intended to leave the United Kingdom at the end of the period of the visit and (c) not satisfied that the appellant would maintain and accommodate himself without recourse to public funds. It was also doubted that the appellant could meet the cost of the return or onward journey. Furthermore the respondent considered that a false document (namely a sponsorship declaration) had been produced in support of the application and therefore the provisions of paragraph 320(7A) of the Immigration Rules applied.

2. The appellant appealed that decision and the matter came before First-tier Tribunal Judge C J Woolley. In a determination promulgated on 13 September 2013 the appeal was dismissed.
3. The appellant sought permission to appeal. Initially permission to appeal was refused but upon a renewed application to the Upper Tribunal permission to appeal was granted the reasons being as follows:-
 - (1) The original judge found that the decision under paragraph 320 was not sustainable, and that the sponsor was a credible and honest witness. His evidence was that the appellant had been visiting the UK since the 1960s and the appellant may not have considered it necessary to supply all of the documentation in view of his previous trips to the UK. He recorded that there was evidence of his business in Pakistan. He dismissed the appeal essentially because the appellant had not provided a personal bank statement although he had provided business accounts.
 - (2) It is arguable that the judge reached a decision against the weight of the evidence. The appeal will be listed to Field House with a time estimate of one hour. If an error of law is found the decision can be remade on that occasion. The sponsor should attend.

Adjournment Request

4. On the morning of the error of law hearing I received a message that Mr Sadaqat Bahir, the sponsor who appeared before the First-tier Tribunal Judge, was unwell and seeking an adjournment. I considered that request. It was not made in accordance with part 4 of the Tribunal Procedure (Upper Tribunal) Rules 2008 because it was not made one clear working day before the date of the hearing. On the assumption that the sponsor was taken ill at short notice - there has been no evidence produced about this - then I accept that he would not be able to give such notice. I therefore went on to consider whether it was in the interests of justice to proceed with the hearing without him.
5. I considered the overriding objective which requires that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible in the interests of the parties to the proceedings and in the wider public interest. I bore in mind in particular that this was (initially anyway) an error of law hearing and that there would be very limited scope for the

sponsor on the facts as had been found and the matters in issue to help me on the error of law point. By reason of the already lengthy delays since the appellant had applied for entry clearance and the reasons that he wished to come to the United Kingdom as expressed in the documentation before me I decided that I should proceed to deal with the error of law issue without granting the adjournment. If I found a material error of law then the appeal should be relisted to enable the sponsor to give evidence.

6. The refusal of entry clearance decision raises, amongst other things, the issue of the appellant's financial circumstances in Pakistan. The comment is made that although the appellant states he has a residential property there and has produced account statements for the company in which he has an interest he provided no evidence of his own financial circumstances. It was pointed out to him that the statement produced does not demonstrate his claimed income. The comment is also made that the funds in the business bank statement are for the running of the business but do not provide satisfactory evidence of the appellant's own financial circumstances.
7. The notice of appeal refers to the business bank account to which the appellant has full access. On review the Entry Clearance Manager commented that he was not satisfied that the appellant had addressed the concerns raised by the Entry Clearance Officer regarding the appellant's current personal and financial circumstances in Pakistan.
8. At the hearing of the appeal the judge noted at paragraph 25 that the respondent doubted the genuineness of the appellant and his intention to return after the trip. "This is based on the lack of evidence produced to support his claimed personal and financial circumstances in Pakistan". The judge then proceeds to state that the sponsor very candidly and honestly said that he could not assist greatly in this area as he did not know about the appellant's bank accounts or about the documentation he had sent from Pakistan. All he could say was that the appellant was a wealthy man who had been visiting the UK since the 1960s. He added that the appellant may not have considered it necessary to supply all the documentation in view of his previous trips to the United Kingdom. As to that point I note that according to the application for entry clearance the appellant has not visited the United Kingdom in the last ten years (see the response to question 73 of the application form) although he has visited the UK previously so that although he may have been a frequent visitor in the past he has certainly not been in recent years.
9. The judge went on to note that no further bank statements had been produced despite the refusal letter. At paragraph 27 he noted further that the sponsor stated that in Pakistan business is considered to be the same as the person. The judge could not accept that this ethos meant that the money in the business bank account is that of the appellant and did not find that the appellant's claimed income could be evidenced by reference to the business account alone. He gave reasons for coming to that

conclusion later in the same paragraph. He stated that it would have been an easy matter to produce a personal bank account showing receipts of income from the business but for whatever reason this had not been produced. Similarly a profit and loss account could have been produced to show the appellant's drawings or profit share from the business but that too was absent.

10. Although finding in favour of the appellant on all other matters, including that he did not produce any fraudulent documentation, the judge dismissed the appeal.
11. The appellant has written somewhat indignantly that he has been humiliated because he is a respected member of his society who has held high office. He states that he is unable to understand how the judge assumed that he is not a genuine visitor or will not leave the United Kingdom after completing the proposed visit.
12. The judge sets out at paragraph 3 of the determination that the burden of proof is on the appellant to meet the requirements of the Rules and the standard of proof required is the balance of probabilities.
13. Had the appellant dealt with the matter of concern to the Entry Clearance Officer, the Entry Clearance Manager and the judge in relation to proof of the appellant's financial circumstances in Pakistan then on balance it seems likely that the judge would have found in the appellant's favour. As it is the judge found that the appellant did not meet the requirements of the Rules because he did not produce the evidence required to show that he complied with the requirements of the Immigration Rules.

My Decision

14. Having reviewed the overall position I find that the judge was entitled to conclude as he did for the reasons given. There has been a full consideration of all the evidence before him and there has been no error such that the appeal should be heard again.
15. In the circumstances the decision of the First-tier Tribunal Judge stands.
16. There has been no request for anonymity and in the particular circumstances of the case I see no reason or need to make an anonymity direction.

Signed

Date

Upper Tribunal Judge Pinkerton

